

1 UNTIED STATES DISTRICT JUDGE BENJAMIN H. SETTLE
2 MAGISTRATE JUDGE J. RICHARD CREATURA
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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 NATHAN ROBERT GONINAN aka NONNIE
12 LOTUSFLOWER,

13 Plaintiff,

14 v.

15 STEPHEN SINCLAIR, in his official capacity,
16 SARA SMITH KARIKO, M.D., in her official
capacity, BRUCE GAGE, M.D., in his official
capacity, and KARIE RAINER, in her official
capacity,

17 Defendant.

No. 3:17-cv-05714-BHS-JRC

AMENDED COMPLAINT

18 INTRODUCTION

19 1.1. Plaintiff Nathan Robert Goninan aka Nonnie Lotusflower (“Plaintiff” and/or
20 “Lotusflower”) is currently incarcerated by the Washington Department of Corrections (“DOC”)
21 in Monroe Correctional Complex (“MCC”) in Monroe, WA after a recent move from
22 Washington State Penitentiary (“WSP”) in Walla Walla, WA.

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1 1.2. Ms. Lotusflower has been in DOC custody since August 2017.

2 1.3. Ms. Lotusflower is a transgender woman—an individual whose gender identity
3 (female) is different from the male gender assigned to her at birth (“assigned gender”).¹

4 1.4. Ms. Lotusflower is Native American and recognizes that some individuals are
5 Two-Spirit, a Native American concept encompassing cross-gender identifying and gender
6 nonconforming individuals.

7 1.5. Ms. Lotusflower is diagnosed by DOC as suffering from gender dysphoria
8 (previously known as Gender Identity Disorder), a serious medical condition characterized by
9 strong cross-gender identification, and clinically significant distress stemming from the
10 disconnect between one’s assigned gender and one’s gender identity.

11 1.6. As a result of gender dysphoria, Ms. Lotusflower experiences severe distress
12 resulting from the incongruence between her typically-male physical features and her female
13 gender identity. She requires medically necessary care to treat gender dysphoria.

14 1.7. The most common forms of treatment for gender dysphoria are counseling, social
15 transition that includes living fully consistent with one’s gender in all aspects of life, hormone
16 therapy, and gender affirming surgeries that conform primary or secondary sex characteristics
17 with gender identity.

18 1.8. Counseling for individuals with gender dysphoria is aimed at supporting patients
19 in managing the distress flowing from discrimination and bias that transgender people typically
20 experience from other people or institutions.

21
22 ¹ At birth, infants are classified as male or female based on a visual observation of their external
23 genitalia. This classification becomes the person’s “sex assigned at birth,” but may not be the
same as the person’s sex/gender identity.

1 1.9. Counseling for individuals with gender dysphoria is not a substitute for other
2 interventions.

3 1.10. Prior to her incarceration at DOC, Ms. Lotusflower was diagnosed with gender
4 dysphoria and lived consistently with her identity as a woman while incarcerated at and in the
5 custody of Oregon Department of Corrections (“ODOC”) until August 2017.

6 1.11. After her transfer from ODOC to DOC, Ms. Lotusflower’s gender dysphoria
7 diagnosis was confirmed by DOC.

8 1.12. Once in the custody of DOC, Ms. Lotusflower sought appropriate medical
9 treatment, including access to feminizing hormones, evaluation for gender affirming surgery,²
10 and the ability to live as a woman while incarcerated. However, Defendants deprived her of
11 medically necessary treatment, and instead have repeatedly punished her for expressing her
12 gender identity, including but not limited to denying her access to programming and subjecting
13 her to extensive periods in solitary confinement.

14 1.13. Defendants’ denial of necessary medical treatment, as well as discipline and
15 punishment of Ms. Lotusflower for expressing her female gender, have caused grave and
16 unnecessary suffering and harm to Ms. Lotusflower, including attempted self-castrations and
17 suicide attempts.

18 1.14. Defendants’ actions violate the Eighth Amendment to the U.S. Constitution’s
19 prohibition on cruel and unusual punishment by denying Ms. Lotusflower’s necessary medical
20 treatment and failing to protect her from harm.

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² Gender affirming surgery is also sometimes referred to as “sex reassignment surgery” or “gender confirming
surgery.”

1 services]" in DOC. RCW 72.10.040. At all times relevant to this action, Mr. Sinclair was acting
2 under color of state law. Mr. Sinclair is sued in his official capacity.

3 3.3. Defendant Sara Smith Kariko, M.D. is Chief Medical Officer ("CMO") for
4 DOC.³ The DOC CMO is "a licensed doctor of medicine who acts as the statewide clinical
5 health services authority." Offender Health Plan at p 5. In that role, Dr. Kariko has a duty to
6 ensure DOC provides constitutionally adequate medical care to prisoners in its custody. She has
7 authority to approve or deny medical treatment for DOC prisoners. At all times relevant to this
8 action, Dr. Kariko was acting under color of state law. Dr. Kariko is sued in her official capacity.

9 3.4. Defendant Bruce Gage, M.D. is Chief of Psychiatry for DOC. In that role, he has
10 a duty to ensure DOC provides constitutionally adequate medical care to prisoners in its custody.
11 He has authority to approve or deny medical treatment for DOC prisoners. At all times relevant
12 to this action, Dr. Gage was acting under color of state law. Dr. Gage is sued in his official
13 capacity.

14 3.5. Defendant Karie Rainer is Director of Mental Health for DOC. In that role, she
15 has a duty to ensure DOC provides constitutionally adequate medical care to prisoners in its
16 custody. She has authority to approve or deny medical treatment for DOC prisoners. At all times
17 relevant to this action, Dr. Rainer was acting under color of state law. Dr. Rainer is sued in her
18 official capacity.

19 3.6. At all times relevant herein, each Defendant was acting in the course and scope of
20 his or her employment and under color of state law.

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³ Plaintiff originally named as a Defendant G. Hammond, who was the then Chief Medical Officer, but has since
been replaced by Dr. Kariko.

FACTUAL ALLEGATIONS

GENDER DYSPHORIA IS A RECOGNIZED SERIOUS MEDICAL CONDITION

4.1. Gender Dysphoria is a diagnosable and treatable condition included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (“DSM-V”), as well as the International Classification of Diseases-10 (“IDC-10”).⁴

4.2. “Gender dysphoria” is a diagnostic term that refers to clinically significant distress associated with an incongruence or mismatch between a person’s gender identity and assigned sex.

4.3. When gender dysphoria is severe and untreated, it can result in a person's inability to function in everyday life. Gender dysphoria is highly treatable. Indeed, with appropriate treatment, individuals with gender dysphoria experience significant relief from

⁴ The DSM-5 describes the criteria as follows: Gender Dysphoria in Adolescents and Adults 302.85 (F64.1)

A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:

1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).

2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).

3. A strong desire for the primary and/or secondary sex characteristics of the other gender.

4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).

5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender)

6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

DSM-5 at 452-53.

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1 distress.

2 4.4. When not properly treated, however, gender dysphoria is often associated with
3 dangerous related conditions such as clinically significant psychological distress, dysfunction,
4 depression, substance use, self-harm, including attempts to perform auto-castration or auto-
5 penectomy that can lead to serious and life-threatening injuries, suicidality, and death.

6 4.5. Without treatment, the path for those suffering from gender dysphoria can be
7 torturous, as evidenced by alarmingly high suicide attempt rates: 40 percent of persons
8 identifying as transgender attempt suicide, nearly 9 times the national average of 4.6 percent,
9 according to the 2015 National Transgender Discrimination Survey.⁵

10 4.6. The data for suicide attempts by incarcerated transgender people increases when
11 they are harassed and mistreated. Citing to the Journal of Correctional Health Care, JCHC Vol.
12 24, Issue 2: April 2018, The National Commission on Correctional Healthcare (“NCCHC”) also
13 cautions there is a “42% increase in the odds of reporting attempted suicide when [prisoners with
14 gender dysphoria are] victimized by an inmate and a 48% increase when [. . .] victimized by
15 correctional staff.”⁶

16 4.7. Plaintiff’s history reflects such effects resulting from inadequate treatment: she
17 has repeatedly experienced suicidal ideation and has engaged in dangerous attempts to self-harm
18 and self-castrate as a response to her despair over Defendants’ denial of necessary treatment for
19 her gender dysphoria.

20 STANDARDS OF CARE FOR INCARCERATED PEOPLE WITH GENDER
DYSPHORIA

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22 ⁵ Available at <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>

23 ⁶ NCCHC Vol 32, Issue 32: Spring 2018 at p. 23.

1 4.8. The World Professional Association for Transgender Health (“WPATH”) is the
2 leading international organization focused on transgender health care.

3 4.9. WPATH has more than 1,000 members throughout the world consisting of
4 physicians, psychiatrists, psychologists, social workers, surgeons, and other health professionals
5 who specialize in the diagnosis and treatment of gender dysphoria.

6 4.10. WPATH publishes the Standards of Care for the Health of Transsexual,
7 Transgender, and Gender Nonconforming People (“Standards of Care”).

8 4.11. The WPATH Standards of Care were first developed in 1979.

9 4.12. The current version of the Standards of Care, Version 7⁷ was published in
10 September 2011 following a five-year process in which eighteen gender dysphoria specialists
11 submitted peer-reviewed papers to help identify the most effective treatments for gender
12 dysphoria.

13 4.13. WPATH’s Standards of Care are recognized by the leading medical and mental-
14 health professional groups as the authoritative and the prevailing standards of care for treating
15 gender dysphoria.

16 4.14. The Standards of Care apply equally to prisoners, and expressly state:

17 Health care for transsexual, transgender, and gender-
18 nonconforming people living in an institutional environment
19 should mirror that which would be available to them if they
20 were living in a non-institutional setting within the same
21 community. . . . All elements of assessment and treatment as
22 described in the SOC can be provided to people living in
23 institutions. Access to these medically necessary treatments
should not be denied on the basis of institutionalization or
housing arrangements. If the in-house expertise of health

⁷ Eli Coleman et al., Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7, 13 Int’l J. of Transgenderism 165 (2011).

1 professionals in the direct or indirect employ of the institution
2 does not exist to assess and/or treat people with gender
3 dysphoria, it is appropriate to obtain outside consultation from
4 professionals who are knowledgeable about this specialized
5 area of health care.⁸

6 4.15. NCCHC recommends that the medical management of prisoners with gender
7 dysphoria “should follow accepted standards developed by professionals with expertise in
8 transgender health,” citing the WPATH Standards of Care.⁹

9 4.16. Under WPATH Standards of Care, treatment for gender dysphoria is designed to
10 help individuals live congruently with their gender identity and thus alleviate the clinically
11 significant distress.

12 4.17. Treatment protocols include socially transitioning (dressing, grooming, and
13 presenting oneself to others in accordance with one’s gender identity), hormone therapy, and
14 surgeries.

15 4.18. The particular course of medical treatment varies based on the individualized
16 needs of the person.

17 **PEOPLE WITH GENDER DYSPHORIA MUST BE ABLE TO ACCESS**
TREATMENT DETERMINED TO BE MEDICALLY NECESSARY, INCLUDING
GENDER AFFIRMING SURGERY

18 4.19. The goals of medical treatments for gender dysphoria, as stated in the Standards
19 of Care, are (1) to alleviate clinically significant distress and impairment of functioning
20 associated with gender dysphoria, and (2) to maximize overall psychological well-being.

21 ⁸ *Id.* at 67.

22 ⁹ NCCHC Policy Statement, Transgender Health Care in Correctional Settings (October 18, 2009; reaffirmed with
23 revision April 2015), <http://www.ncchc.org/transgender-health-care-in-correctional-settings> (last visited March 22, 2019) (footnote omitted).

1 4.20. As recognized by both the DSM-V and the Standards of Care, people with gender
2 dysphoria who do not receive appropriate medical treatment are at risk of depression, anxiety,
3 suicide, and genital self-harm, including attempts to perform auto-castration or auto-penectomy
4 that can lead to serious and life-threatening injuries.

5 4.21. The Standards of Care set forth treatment options for gender dysphoria including:
6 changes in gender expression and role (which may involve living part time or full time in another
7 gender role, consistent with one's gender identity); hormone therapy to feminize or masculinize
8 the body; surgery to change primary and/or secondary sex characteristics (e.g. breasts/chest,
9 external and/or internal genitalia, facial features, body contouring); and psychotherapy
10 addressing the negative impact of gender dysphoria and stigma on mental health, alleviating
11 internalized transphobia, enhancing social and peer support, improving body image, or
12 promoting resilience.

13 4.22. After a diagnosis of gender dysphoria is made, the Standards of Care require that
14 a competent medical professional with knowledge and expertise in gender dysphoria evaluate a
15 patient for appropriate and necessary treatment options. This medical treatment not only
16 improves a patient's quality of life, but also limits the development of mental health issues,
17 which often accompany lack of treatment.

18 4.23. The Standards of Care also make clear that surgical care to treat gender dysphoria
19 is not "elective." WPATH Standards of Care at p. 55.

20 4.24. For many people, gender affirming surgery is an "essential and medically
21 necessary" treatment to alleviate gender dysphoria. WPATH Standards of Care at p. 54.
22 Hormone therapy alone is not sufficient for such individuals.

23 4.25. All of the WPATH Standards of Care apply to individuals in institutional

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1 environments such as prisons.

2 4.26. The Standards of Care state that “[a]ll elements of assessment and treatment as
3 described in the SOC can be provided to people living in institutions...If the in-house expertise
4 of health professionals in the direct or indirect employ of the institution does not exist to assess
5 and/or treat people with gender dysphoria, it is appropriate to obtain outside consultation from
6 professionals who are knowledgeable about this specialized area of health care.” WPATH
7 Standards of Care at p. 67.

8 4.27. Leading medical and mental-health professional groups—including the American
9 Medical Association, the American Psychological Association, the American Psychiatric
10 Association, the American Academy of Family Physicians, the American Congress of
11 Obstetricians and Gynecologists, the Endocrine Society, the National Association of Social
12 Workers, and WPATH—all agree that gender dysphoria is a serious medical condition, and that
13 treatment for gender dysphoria is medically necessary for many transgender people.

14 DOC’S GENDER DYSPHORIA POLICY

15 4.28. The DOC provides health services to prisoners according to the Offender Health
16 Plan (“OHP”), which defines the services the Department considers “medically necessary.”

17 4.29. The OHP recognizes gender dysphoria as a diagnosis qualifying a prisoner for
18 treatment and then incorporates by reference the DOC’s Gender Dysphoria Protocol for the
19 purposes of that treatment.

20 4.30. The Gender Dysphoria Protocol (the “Policy”) provides that “the correctional
21 environment is a relative contraindication to the indication of sexual reassignment treatment, as
22 are self-inflicted genital or other forms of self-mutilation,” but certain limited treatments may be
23 available under certain circumstances.

1 4.31. Authorization of medically necessary treatment for gender dysphoria is typically
2 determined on a case-by-case basis by the Gender Dysphoria Care Review Committee¹⁰ (“GD
3 CRC”), which reviews case summaries and votes on whether or not to authorize proposed care.

4 4.32. The GD CRC case must be presented by, at a minimum, the treating psychiatrist,
5 primary therapist,¹¹ and medical provider.

6 4.33. Those charged with treatment—specifically, the “treating correctional provider
7 and/or clinical consultants,” and “consulting community endocrinologist, psychiatrist or other
8 specialist (as necessary)” as it relates to the gender dysphoria specific-care of their patient—have
9 no vote in this decision-making process.

10 4.34. Only the Defendants DOC Chief Medical Officer, Chief of Psychiatry and Mental
11 Health Director are voting members of the GD CRC. “Decisions of the GD CRC are made by
12 majority vote” of these three (3) functions.

13 4.35. However, the GD CRC was barred from authorizing gender affirming surgery
14 under any circumstances until June 19, 2018—287 days after this matter was filed with the
15 Court, and as a result, the GD CRC denied Ms. Lotusflower’s request for medically necessary
16 gender affirming surgery.

17 **PRE-LAWSUIT BLANKET BAN OF MEDICALLY NECESSARY GENDER**
18 **AFFIRMING TREATMENT**

19 4.36. The OHP includes a Level III classification for medical treatment that it deems
20

21 ¹⁰ DOC’s defines the CRC as a “[g]roup of DOC primary care physicians, dentists, Pas, and ARNPs, organized in
22 discipline- or condition-specific committees, appointed by the Chief Medical Officer (CMO) to review the medical
necessity of proposed health care.” OHP, effective March 18, 2018 at p. 5.

23 ¹¹ “Mental health staff provider responsible for coordinating an offender’s mental health care.” OHP, effective
March 18, 2018 at p. 5.

1 “not medically necessary.”

2 4.37. Those services categorized as Level III “cannot be authorized by an individual
3 provider or CRC” “even if medically appropriate.”

4 4.38. Regarding gender dysphoria, the Policy states:

5 **Offenders with [gender dysphoria] and [transgender] identification are NOT
6 eligible for:**

7 Cosmetic or elective surgical procedures for the purpose of reassignment.
8 Such interventions are considered Level III by the Offender Health Plan
9 (OHP)

10 4.39. Even though surgical treatment for gender dysphoria is neither cosmetic nor
11 elective, the DOC applied this ban to all surgical treatment regardless of medical need.

12 4.40. DOC Chief of Psychiatry Dr. Gage admitted in September 2017 that since 2009
13 “sex reassignment surgery” has been a Level III service that “is not provided under the OHP.”

14 4.41. In a September 2017 email, Dr. Gage explained the history of DOC’s blanket ban:

15 In 2009, there was no separate mental health section in the OHP. At
16 that time, ‘gender modification’ was listed as a level I service for
continuation of hormone therapy but with some conditions. It was
listed as a level II service when the person was not receiving
hormone therapy at the time of admission to DOC. It was also listed
as a level 3 service with regard to surgery or other treatments not
specified in the level I and II sections.

17 GID/GD has been in the mental health section of the Offender
18 Health Plan since its inception in 2011. Initially, it was broken into
level I for continuation of community treatment but subject to the
GID CRC/guideline and as level II for ‘gender modification’ subject
to the GID guideline. The language of the preceding paragraph was
retained in the medical section of the OHP until 2012 when we made
GID treatment generally a level II condition subject to the GID
protocol (where the GID-CRC and criteria were specified). The
reason we made it level II was that treatment of GID (now GD) was
always subject to the GID guideline/CRC and was thus more
properly considered level II – treatment that would not always be
provided. ‘Gender modification’ was retained in the medical section

1 under level III for surgical treatment and other treatment not covered
2 by the GID guideline/CRC.

3 In July 2017, the Gender Dysphoria protocol was modified to
4 include transgendered persons and to remove language regarding
5 medical necessity in favor of continuation of a sexual reassignment
6 regimen or treatment being ‘clinically indicated,’ and also subject to
7 the person’s willingness to disclose healthcare information and the
8 absence of contraindications to treatment.

9 With regard to surgery, the current language in the Gender
10 Dysphoria protocol is clear:

11 “Offenders with GD and TG identification are NOT eligible for:

12 • Cosmetic or elective surgical procedures for the purpose of reassignment. Such
13 interventions are considered Level III by the Offender Health Plan (OHP)”

14 As you probably know, level III means the service is not provided under the OHP.
15 In short, surgery for gender reassignment is level III. This has been the meaning
16 of the language you asked about since 2009.

17 4.42. DOC’s blanket ban deeming gender affirmation surgery as “not medically
18 necessary” under any circumstances was directly at odds with well-established medical
19 principles and the individualized evaluations provided by DOC staff which have repeatedly
20 found gender affirming surgery medically necessary for Plaintiff Lotusflower¹².

21 **DEFENDANTS DELIBERATELY WITHHELD FROM PLAINTIFF MEDICALLY
22 NECESSARY TREATMENT**

23 4.43. Plaintiff Lotusflower is currently incarcerated by DOC in MCC in Monroe, WA,
24 following a transfer from WSP in Walla Walla, WA.

25 4.44. Ms. Lotusflower has been incarcerated and in DOC custody since August 2017.

26

27 ¹² In July 2018, in response to Plaintiff’s Motion for Partial Summary Judgment, which challenged DOC’s “blanket
28 ban” as a violation of the Eighth Amendment, DOC modified the OHP to categorize treatment for Gender Dysphoria
29 under “Level II” services.

1 4.45. Ms. Lotusflower is a transgender woman—an individual whose gender identity
2 (female) is different from the male gender assigned to her at birth. She identified as female very
3 young in her life.

4 4.46. Ms. Lotusflower is Native American and her Tribe recognizes that some individuals
5 are Two-Spirit, a Native American concept encompassing cross-gender identifying and gender
6 nonconforming individuals.

7 4.47. Immediately prior to incarceration at DOC, Ms. Lotusflower was in the custody of
8 ODOC.

9 4.48. On or about October 31, 2016, ODOC Dr. Mary McCarthy, M.D. diagnosed Ms.
10 Lotusflower with gender dysphoria.

11 4.49. Ms. Lotusflower's gender dysphoria causes her to experience severe distress
12 resulting from the incongruence between her typically-male physical features and her female
13 gender identity, and requires medically necessary care and treatment.

14 4.50. The most common forms of treatment for gender dysphoria are counseling, social
15 transition that includes living fully consistent with one's gender in all aspects of life, hormone
16 therapy, and gender affirming surgeries that conform primary or secondary sex characteristics
17 with gender identity.

18 4.51. Counseling for individuals with gender dysphoria is aimed at supporting patients
19 in managing the distress flowing from discrimination and bias that transgender people typically
20 experience from other people or institutions

21 4.52. While still in ODOC custody and less than two (2) months from her initial gender
22 dysphoria diagnosis, on or about December 8, 2016, it was deemed medically necessary to
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1 provide Ms. Lotusflower with gender affirming medical care and treatment to address her gender
2 dysphoria.

3 4.53. On February 14, 2017, ODOC deemed it medically necessary for Ms. Lotusflower
4 to be placed on Hormone Replacement Therapy (“HRT”) to manage her symptoms of gender
5 dysphoria and she lived full-time as a woman while incarcerated until August 2017, when she
6 was transferred to DOC.

7 4.54. After her transfer from ODOC to DOC, Ms. Lotusflower’s gender dysphoria
8 diagnosis was confirmed by DOC.

9 4.55. Ms. Lotusflower sought appropriate medical treatment from DOC, including
10 continued access to hormone therapy, evaluation for gender affirming surgery, and the ability to
11 live as a woman while incarcerated.

12 4.56. Defendants have refused to allow Plaintiff to access such medically necessary
13 treatment, and instead have repeatedly punished, taunted and harassed Plaintiff for expressing
14 her female gender, including but not limited to Ms. Lotusflower repeatedly being called names
15 like “tranny” by DOC staff, and being placed in solitary confinement for excessive and
16 inhumane periods, often causing significant deterioration of her mental health.

17 4.57. Defendants and DOC have a blanket policy banning the use of makeup, which is
18 medically necessary for gender nonconforming prisoners in male prisons, and have otherwise
19 denied medically necessary treatments including allowing women’s undergarments and clothing
20 and other feminizing methods.

21 4.58. Defendants have further denied Plaintiff the benefits of public services, programs
22 and activities as a result of her gender dysphoria, failed to provide proper and reasonable training
23 to custody and health staff in responding to persons with gender dysphoria; and disciplined

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1 Plaintiff for actions or behavior related to gender dysphoria and imposing punishments depriving
2 Plaintiff of programs and activities because of such actions or behavior in a manner detrimental
3 to her health.

4 **DEFENDANTS' FAILURE TO PROVIDE MEDICALLY NECESSARY**
5 **TREATMENT**

6 4.59. Even DOC's own medical professional Dr. Patricia Zeisler found that “[a]t this
7 time corrective surgery is medically necessary in order to completely eradicate the gender
8 dysphoria.”

9 4.60. Similarly, a primary encounter report signed by DOC Dr. Wendi Wachsmuth
10 found that Lotusflower “needs gender confirming surgery to relieve her gender dysphoria”.

11 4.61. To date, Plaintiff Lotusflower's requests for gender affirming surgery have been
12 denied by DOC--first as Level III services according to the blanket ban Policy and then at urging
13 of a paid gender dysphoria consultant, Stephen Levine, PhD, whose opinions have been rejected
14 by several courts across the country.

15 4.62. Two courts in the Ninth Circuit have noted the lengths to which Dr. Levine will
16 go to determine incarcerated people with gender dysphoria are not entitled to gender affirming
17 surgery. The Northern District of California gave “very little weight to the opinions of Levine,
18 whose report misrepresents the Standards of Care; overwhelmingly relies on generalizations
19 about gender dysphoric prisoners, rather than an individualized assessment of [the complainant];
20 contains illogical inferences; and admittedly includes references to a fabricated anecdote.”

21 *Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1188 (N.D. Cal. 2015), appeal dismissed and
22 remanded, 802 F.3d 1090 (9th Cir. 2015).

23 4.63. Just last year, a district court in neighboring Idaho wrote: “Dr. Levine is

1 considered an outlier in the field of gender dysphoria and does not ascribe to the WPATH
2 Standards of Care. His training materials do not reflect opinions that are generally accepted in
3 the field of gender dysphoria.” *Edmo v. Idaho Dep’t of Correction*, 358 F. Supp. 3d 1103 (D.
4 Idaho 2018)).

5 4.64. Defendants were aware of the *Norsworthy* opinion and the above concerns raised
6 by that court before entering into the gender dysphoria consultant contract with Dr. Levine.

7 4.65. The mere use of Dr. Levine as a paid DOC gender dysphoria consultant evidences
8 Defendants’ lack of intention to provide medically necessary treatment to those with gender
9 dysphoria, including Plaintiff.

10 **PLAINTIFF’S CLAIMS FOR RELIEF**

11 **CLAIM FOR RELIEF**

12 Failure to Provide Necessary Medical Treatment
(Eighth Amendment; 42 U.S.C. § 1983)
Against ALL Defendants

13 5.1 Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as if
14 fully set forth herein.

15 5.2 Plaintiff has been diagnosed with the serious medical condition of gender
16 dysphoria, which continues to cause Plaintiff serious mental distress and, without necessary
17 treatment, has resulted in serious physical harm to Plaintiff.

18 5.3 Defendants are responsible for providing adequate and necessary medical
19 treatment to Plaintiff, including treatment for persons diagnosed with gender dysphoria.

20 5.4 Defendants have failed to follow even DOC’s own policies relating to Plaintiff’s
21 treatment. For example, Defendants failed to convene and/or conduct the necessary DOC CRC
22 meetings to meaningfully evaluate Plaintiff’s treatment for gender dysphoria.

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1 5.5 Defendants have failed to provide adequate and necessary treatment to Plaintiff
2 that is consistent with prevailing medical standards of care for gender dysphoria, as evidenced, in
3 relevant part, by Defendants and DOC's blanket policy banning the use of makeup, women's
4 clothing and other feminizing methods, which are medically necessary for gender
5 nonconforming prisoners in male prisons.

6 5.6 Defendants' acts and/or omissions with respect to Plaintiff's treatment reflect
7 Defendants' policy, custom, practice and/or procedure of failing to provide adequate and
8 necessary medical treatment to inmates with gender dysphoria.

9 5.7 Each Defendant has been and remains deliberately indifferent to Plaintiff's
10 medical need to be adequately treated for gender dysphoria, including but not limited to
11 evaluation for gender affirming surgery by an unbiased qualified medical personnel with
12 expertise in the diagnosis and treatment of gender dysphoria and provision of such surgery, if
13 determined appropriate, as well as other medical treatments and accommodations that would
14 alleviate Plaintiff's serious medical symptoms.

15 5.8 Each Defendant has known of Plaintiff's serious medical need for treatment for
16 gender dysphoria and failed to take reasonable measures to address Plaintiff's continued pain and
17 suffering resulting from her inadequately treated gender dysphoria.

18 5.9 Defendants' continued denial of necessary medical treatment for gender
19 dysphoria is causing irreparable harm and unnecessary suffering to Plaintiff, including severe
20 anxiety and distress resulting in emotional, psychological, and physical harm.

21 5.10 Defendants' failure to provide necessary medical treatment to Plaintiff violates
22 the Eighth Amendment to the U.S. Constitution.

23 5.11 As a direct and legal result of Defendants' actions and omissions, Plaintiff has

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1 suffered and continues to suffer damages including, without limitation, pain and suffering;
2 emotional, psychological and physical distress; and violation of dignity.

3 5.12 Defendants by engaging in the aforementioned acts or omissions and/or in
4 ratifying such acts or omissions, engaged in willful, malicious, intentional, and/or oppressive
5 conduct, and/or acted with willful and conscious disregard of the rights, welfare, and safety of
6 Plaintiff, thereby justifying injunctive and declaratory relief.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff requests entry of judgment in her favor and against Defendants
9 as follows:

10 1. For injunctive and declaratory relief, including but not limited to enjoining
11 Defendants to provide Plaintiff with adequate and necessary medical care;

12 2. For injunctive and declaratory relief, including but not limited to enjoining
13 Defendants to provide Plaintiff equal access to clothing, cosmetic, and hygiene items available to
14 inmates housed in female institutions;

15 3. For injunctive and declaratory relief, including but not limited to enjoining
16 Defendants to house Plaintiff at an institution consistent with her gender identity;

17 4. For injunctive and declaratory relief, including but not limited to declaring
18 unconstitutional and violative of federal law Defendants' practices in denying Plaintiff and other
19 similarly situated inmates with adequate and necessary medical treatment.

20 5. For an award of Plaintiff's costs and attorneys' fees;

21 6. For leave to amend these pleadings to conform to the evidence as presented at
22 trial; and

23 7. For such other and further relief as the Court may deem just and proper.

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3 DATED this ____th day of April, 2019.
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VERIFICATION

Nathan Goninan aka Nonnie Lotusflower, on oath, says:

I am the above named Plaintiff in the above-entitled action; I have read the foregoing AMENDED COMPLAINT and know the contents to be true.

NONNIE M. LILLO
NONNIE LOTUSFLOWER, PLAINTIFF

4/11/19

DATE

CERTIFICATE OF SERVICE
No. 3:17-cv-05714-BHS-JPC

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